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State v. Jackson Appellant's Brief Dckt. 44473

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44473
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR-FE-2015-11436
v.)	
)	
RORY ALAN JACKSON,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Rory Alan Jackson appeals from his judgment of conviction for injury to jails. Mr. Jackson was found guilty following a jury trial and was also found to be a persistent violator. The district court imposed a unified sentence of five years, with one and one-half years fixed. Mr. Jackson now appeals, and he asserts that the district court abused its discretion by imposing an excessive sentence.

Statement of the Facts & Course of Proceedings

On June 8, 2015, the Ada County Sheriff's Department reported that Mr. Jackson, an inmate at the Ada County Jail, kicked the door of his cell multiple times, eventually causing the cell door window to break. (Presentence Investigation Report (*hereinafter*, PSI, p.3.) Mr. Jackson was charged with one count of injury to jails. (R., p.27.) The State subsequently filed a persistent violator enhancement. (R., p.59.) Mr. Jackson was found guilty of the charge and of being a persistent violator. (R., pp.123; 129.) The district court imposed a unified sentence of five years, with one and one-half years fixed. (R., p.131.) Mr. Jackson appealed. (R., p.138.) He asserts that the district court abused its discretion by imposing an excessive sentence.

ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of five years, with one and one-half years fixed, upon Mr. Jackson following his conviction for injury to jails?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Five Years, With One and One-Half Years Fixed, Upon Mr. Jackson Following His Conviction For Injury To Jails

Mr. Jackson asserts that, given any view of the facts, his unified sentence of five years, with one and one-half years fixed, is excessive. Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record giving consideration to the nature of the offense, the character of the offender, and the protection of the public interest. See *State v. Reinke*, 103 Idaho 771 (Ct. App. 1982).

The Idaho Supreme Court has held that, “[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.” *State v. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). Mr. Jackson does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Jackson must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* (citing *State v. Broadhead*, 120 Idaho 141, 145 (1991), *overruled on other grounds by State v. Brown*, 121 Idaho 385 (1992)). The governing criteria or objectives of criminal punishment are: (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing. *Id.* (quoting *State v. Wolfe*, 99 Idaho 382, 384 (1978), *overruled on other grounds by State v. Coassolo*, 136 Idaho 138 (2001)).

At the sentencing hearing, counsel noted that Mr. Jackson did not dispute that he kicked the door, but the argument at trial was that Mr. Jackson was not willfully and intentionally trying to break the glass. (Tr., p.144, Ls.14-16.)¹ Counsel emphasized that Mr. Jackson had “been struggling with mental illness his whole life.” (Tr., p.144, Ls.10-13.) Counsel had spoken with Mr. Jackson, and reported that Mr. Jackson realized that he needed to stay on top of his mental health treatment in order to succeed. (Tr., p.145, Ls.4-7.) Counsel suggested that Mr. Jackson could be a candidate for mental health court. (Tr., p.145, Ls.5-7.) Regarding the allegations that led to the charge that put

¹ Citations to the transcript in this brief are to the transcript that contains the second day of trial and the sentencing hearing.

Mr. Jackson in the county jail, counsel indicated that Mr. Jackson was charged with attempted arson after an incident at the Medicaid office or a mental health treatment facility where he was trying to set up his medications for his treatment. (Tr., p.146, Ls.1-4.) Counsel did not believe that the prison was the best place for Mr. Jackson to deal with his mental health issues and that, “maybe our community needs to take a better look at how we deal with mental health issues.” (Tr., p.147, Ls.1-6.) Mr. Jackson had a history of paranoid schizophrenia and polysubstance abuse. (PSI, p.144.)

Further, Mr. Jackson also had the support of his family at sentencing. He had the support of two sisters and two brothers, and his sister Karen was present at the sentencing hearing. (Tr., p.145, Ls.1-2.)

Considering that Mr. Jackson had the support of family and recognized that he had mental health issues and needed to stay on top of his treatment, Mr. Jackson submits that the district court abused its discretion by imposing an excessive sentence of five years, with one and one-half years fixed.

CONCLUSION

Mr. Jackson respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 21st day of April, 2017.

_____/s/_____
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 21st day of April, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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_____/s/_____
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